

¹ 5 U.S.C. § 8101 *et seq.*

of total disability for the period June 28 through December 20, 2010.² In a July 10, 2010 decision, the Board affirmed May 3 and September 22, 2010 decisions denying her recurrence claim for the period December 21, 2010 through February 22, 2011.³ By decision dated October 3, 2012, the Board affirmed decisions dated December 16, 2011 denying recurrence claims for the periods February 23 to June 3, 2011 and July 22 to December 16, 2011.⁴ The facts and law contained in those decisions are incorporated herein by reference. The relevant facts are delineated below.

OWCP accepted appellant's April 30, 2002 occupational disease claim for left shoulder tendinitis and left cubital tunnel syndrome.⁵ Appellant returned to modified duty on August 20, 2007. By decision dated March 9, 2010, OWCP accepted her recurrence claim for the period October 22, 2008 through March 7, 2010. By decision dated May 19, 2010, it denied appellant's recurrence claim for the period March 27 through June 27, 2010 on the grounds that the record did not contain medical evidence establishing that she was disabled during the claimed period.

The record reflects that on December 4, 2010 appellant's treating physician, Dr. Tariq M. Awan, Board-certified in family medicine, released appellant to work full time with restrictions, including no repetitive or overhead work and no lifting above the shoulder. On that same date, appellant accepted a full-time position as a modified mail handler, which required her to day-tag parcels as they came off trailers and to walk areas to ensure that parcels were tagged. She worked only one day in that light-duty job.

On January 13, 2011 the employing establishment notified appellant of its intent to terminate her for failure to report to work after working for one day on December 4, 2010 or to provide evidence to support her claim that she was unable to work after that date. Appellant was considered to be absent without leave (AWOL) and was placed on administrative leave without pay. The record reflects that she was terminated effective February 25, 2011 for failing to report to work as assigned from December 5 through 23, 2010 and failing to provide any medical documentation of her inability to work.⁶

By decision dated December 20, 2010, OWCP denied appellant's claim for compensation for the period June 28 through December 20, 2010 on the grounds that the medical evidence of record failed to establish that she was disabled for work during that period due to the accepted

² Docket No. 11-1350 (issued February 3, 2012).

³ Docket No. 12-57 (issued July 10, 2012). The Board also set aside an August 18, 2011 decision denying merit review remanded the case for a merit review of a May 19, 2010 decision denying a recurrence claim for the period March 27 through June 27, 2010.

⁴ Docket No. 12-708 (issued October 3, 2012).

⁵ Appellant's April 23, 2002 claim was accepted for contusions of the chest and left arm, elbow and shoulder in File No. xxxxxx836. File No. xxxxxx836 was combined with the instant case (File No. xxxxxx142), with File No. xxxxxx142 serving as the master file.

⁶ Appellant grieved her potential firing from the employing establishment. She was permitted to return to limited duty in June 2011.

work injury. By decision dated February 3, 2012, the Board affirmed the December 20, 2010 decision denying appellant's recurrence claim.

By decisions dated May 3 and September 22, 2011, OWCP denied appellant's compensation claim for disability for the period December 21, 2010 through February 22, 2011. In its July 10, 2012 decision, the Board affirmed those OWCP decisions, finding that appellant had abandoned her light-duty position after December 4, 2010 and failed to establish that her light-duty position was improperly withdrawn.

Appellant filed claims for compensation for the period February 23 through June 3, 2011 and July 22 through September 22, 2011. By decision dated December 16, 2011, OWCP denied her claim for compensation beginning from February 23 through June 3, 2011, finding that the period claimed was a continuation of the administrative leave forced upon her when she attempted to return to work on December 4, 2010. In a separate decision dated December 16, 2011, OWCP denied appellant's claim for compensation for the period July 22 through December 16, 2011 on the grounds that the medical evidence was insufficient to establish that she was disabled from performing the duties of her modified position during the period in question. By decision dated October 3, 2012, the Board affirmed OWCP's December 16, 2011 decisions, finding that she had not demonstrated that she was disabled from working her modified position during the claimed periods due to her accepted condition.

Appellant filed claims for compensation beginning December 16, 2011 through May 18, 2012. In letters dated March 27 and April 4, 2012, OWCP informed her that her absence from work appeared to be a continuation of her claim for disability beginning July 22, 2011, which it had denied. It advised appellant to submit a Form CA-2a and supporting medical evidence if she had returned to work since July 22, 2011 and believed that she had sustained a recurrence of disability.

Appellant submitted a December 9, 2011 report from Dr. Sadiq Haque, Board-certified in family medicine, who treated her for left arm pain. On examination, Dr. Haque found acromioclavicular (AC) joint tenderness and mild paraspinal tenderness on the left. There was restricted range of motion on the left side, forward flexion and abduction was to about 110 to 150 degrees and external rotation was to 60 degrees. There was decreased sensation in the C7 dermatome on the left. Dr. Haque diagnosed left rotator cuff tendinopathy and subacromial impingement and left C7 radiculitis. He stated that he had given appellant "a work note for a one-arm job." The record also contains a report of a December 9, 2011 x-ray of the left shoulder and elbow and a December 19, 2011 electromyogram (EMG) report.

In a February 17, 2012 attending physician's report, Dr. Awan diagnosed left cubital tunnel syndrome, left rotator cuff tendinitis and left lumbar radiculopathy. He indicated by placing a checkmark in the "yes" box his belief that appellant's condition was caused or aggravated by employment. The form report reflected that appellant was disabled from March 30 through December 30, 2010.

Appellant submitted a March 6, 2012 note from Dr. Rhona A. Fingel, a treating physician, who stated that appellant was restricted from participating in normal activities and had left arm restrictions from July 22, 2011 through July 1, 2012. Dr. Fingel stated that appellant

might return to work on July 2, 2012 and recommended that she undergo physical therapy on her left shoulder for eight weeks.

In a March 27, 2012 attending physician's report, Dr. Fingel diagnosed left shoulder superior labrum anterior posterior tear and tendinosis and indicated by placing a checkmark in the "yes" box her belief that the diagnosed condition was caused or aggravated by employment. Noting the period of total disability as July 22, 2011 through July 1, 2012, Dr. Fingel stated that appellant most likely would not be able to return to work.

In a May 18, 2012 report, Dr. Haque provided examination findings, which included left AC joint tenderness on palpation and mild swelling in the anterior aspect of the left shoulder. He found decreased range of motion and weakness with supraspinatus testing. Dr. Haque diagnosed left shoulder rotator cuff tendinopathy and subacromial impingement and left shoulder biceps tenosynovitis.

By decision dated June 4, 2012, OWCP denied appellant's claim for compensation beginning December 16, 2011 on the grounds that the medical evidence was insufficient to establish disability during the claimed period due to the March 28, 2002 work injury.

LEGAL PRECEDENT

Section 10.5(x) of OWCP's regulations define "recurrence of disability" as an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness, without an intervening injury or new exposure to the work environment that caused the illness.⁷ This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn, (except when such withdrawal occurs for reasons of misconduct, nonperformance of job duties or a reduction-in-force) or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.⁸

When an employee, who is disabled from the job he or she held when injured on account of employment-related residuals, returns to a light-duty position, or the medical evidence establishes that he or she can perform the light-duty position, the employee has the burden to establish, by the weight of the reliable, probative and substantial evidence, a recurrence of total disability, and show that he or she cannot perform such light duty. As part of this burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.⁹

The Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought.

⁷ 20 C.F.R. § 10.5(x). See *Carlos A. Marrero*, 50 ECAB 117 (1998).

⁸ *Id.*

⁹ *Conard Hightower*, 54 ECAB 796 (2003).

To do so would essentially allow employees to self-certify their disability and entitlement to compensation.¹⁰

ANALYSIS

OWCP denied appellant's compensation claim for benefits commencing December 16, 2011 on the grounds that the evidence failed to establish that she was disabled due to her accepted injury and that the period claimed was a proper continuation of the administrative leave forced upon appellant due to her AWOL status. The Board finds that OWCP properly denied appellant's claims for compensation and, therefore, affirms the June 4, 2012 decision.

In its July 10, 2012 decision, the Board affirmed the denial of appellant's compensation claim for the period December 21, 2010 through February 22, 2011. The Board found that the employing establishment had provided her with a modified position that was within her medical restrictions, that she abandoned the position on December 4, 2010 without providing sufficient medical evidence that she was disabled from performing the duties of the position and that she failed to establish that her light-duty position was improperly withdrawn. As noted, the findings of the Board in its July 10, 2012 decision remain the law of this case. As it was established that the modified position was within appellant's restrictions and that it was not improperly withdrawn, she had the burden to establish that she was disabled from performing the duties of the position during the claimed period.¹¹ The Board finds that the relevant medical evidence of record does not establish that appellant was disabled from working her modified position commencing December 16, 2011 due to her accepted condition.

On December 9, 2011 Dr. Haque provided examination findings and diagnosed left rotator cuff tendinopathy and subacromial impingement and left C7 radiculitis. He stated that he had given appellant "a work note for a one-arm job." On May 18, 2012 Dr. Haque again provided examination findings and diagnosed left shoulder rotator cuff tendinopathy and subacromial impingement and left shoulder biceps tenosynovitis. Neither report, however, contains an opinion as to whether appellant's condition had worsened or whether she was disabled during the claimed period due to her accepted injury. Dr. Haque did not explain how appellant's diagnosed condition prevented her from performing the duties of her modified position. His reports therefore are of diminished probative value and are insufficient to establish appellant's claim.

In his February 17, 2012 attending physician's report, Dr. Awan diagnosed left cubital tunnel syndrome, left rotator cuff tendinitis and left lumbar radiculopathy and indicated by placing a checkmark in the "yes" box his belief that appellant's condition was caused or aggravated by employment. The Board has held that an opinion consisting of a physician's checkmark is of little probative value without any explanation or rationale for the conclusion

¹⁰ *Fereidoon Kharabi*, 52 ECAB 291 (2001).

¹¹ The Board has final authority to determine questions of law and fact. Its determinations are binding upon OWCP and must, of necessity, be so accepted and acted upon by the Director. Otherwise there could be no finality of decisions; the whole appeals procedure would be nullified and questions would remain moot. *Anthony Greco*, 3 ECAB 84, 85 (1949).

reached.¹² Dr. Awan stated that appellant was disabled from March 30 through December 30, 2010. He did not explain, however, how her claimed disability was causally related to her accepted condition. Moreover, Dr. Awan did not address the period of disability claimed, namely December 16, 2011 forward. As noted, the Board will not require OWCP to pay compensation in the absence of medical evidence directly addressing the particular period of disability for which compensation is sought.¹³

Dr. Fingel's reports are also insufficient to establish appellant's claim. In her March 6, 2012 note, she stated that she was restricted from participating in normal activities and had left arm restrictions from July 22, 2011 through July 1, 2012. Dr. Fingel stated that appellant might return to work on July 2, 2012 and recommended that she undergo physical therapy on her left shoulder for eight weeks. The report did not contain examination findings, a definitive diagnosis or an explanation as to how appellant's claimed disability was causally related to her accepted condition. Therefore, it is of limited probative value.

In the March 27, 2012 attending physician's report, Dr. Fingel provided a diagnosis, a checkmark indicating her belief that the diagnosed condition was caused or aggravated by employment and a statement that appellant was disabled from July 22, 2011 through July 1, 2012. She did not explain, however, how appellant's claimed disability was causally related to her accepted condition. Therefore, Dr. Fingel's report is of diminished probative value and is insufficient to establish appellant's claim.¹⁴

The remaining medical evidence of record, including x-ray and EMG reports that do not contain an opinion on the cause of appellant's condition or on the issue of her disability, are of limited probative value and are insufficient to establish appellant's recurrence claim.

Appellant has failed to establish by the weight of the reliable, probative and substantial evidence, a change in the nature and extent of the injury-related condition resulting in her inability to perform the duties of her modified employment. She has provided insufficient rationalized opinion evidence establishing that she was disabled for the period December 16, 2011 through May 18, 2012, or any evidence that the employing establishment withdrew, or was unable to provide her with, a light-duty job within her medical restrictions. As appellant has not submitted sufficient medical evidence to establish that she sustained a recurrence of disability due to her accepted employment injury, the Board finds that she has not met her burden of proof.¹⁵

¹² *D.D.*, 57 ECAB 734 (2006); *Sedi L. Graham*, 57 ECAB 494 (2006).

¹³ See *supra* note 10 and accompanying text.

¹⁴ Medical conclusions unsupported by rationale are of little probative value. *Willa M. Frazier*, 55 ECAB 379 (2004).

¹⁵ Appellant filed claims for compensation beginning December 16, 2011 through May 18, 2012. Therefore, OWCP's decision is hereby modified to reflect that appellant's claims for that period are denied.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that she sustained a recurrence of disability that was causally related to her accepted injury for the period December 16, 2011 through May 18, 2012.

ORDER

IT IS HEREBY ORDERED THAT the June 4, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 4, 2012
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board